



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

MAY 24 2006

Ref: 8ENF-L

CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

Charles Lohmiller
Lohmiller & Company d/b/a
Carrier West, Inc.
4800 Osage Street
Denver, CO 80221

Re: Complaint and Notice of
Opportunity for Hearing,
Docket No. CAA-08-2006-0004

Dear Mr. Lohmiller:

Enclosed is an administrative complaint seeking penalties for violation by Lohmiller & Company d/b/a Carrier West, Inc. ("Carrier West" or "Respondent") of certain requirements under the Clean Air Act ("CAA") and its implementing regulations.

Complaint and Notice of Opportunity for Hearing

Carrier West is hereby served with a Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") issued under the authority of Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), as amended on November 15, 1990. Enclosed with this Complaint are the Consolidated Rules of Practice and the Stationary Source Civil Penalty Policy referenced in the Complaint.

The U.S. Environmental Protection Agency ("EPA") alleges in the Complaint that Carrier West failed to comply with the "Stratospheric Ozone Protection" requirements of Subchapter VI, at Section 608 of the CAA, 42 U.S.C. §§ 7671g, and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Control). These requirements prohibit a corporation, in the course of maintaining, servicing, repairing, or disposing of an appliance, from knowingly venting or otherwise knowingly releasing or disposing of any class I or class II substance, or substitute substance, used as a refrigerant in such appliance in a manner which permits such substance to enter the environment.



Printed on Recycled Paper

By law, the Respondent has the right to request a hearing regarding the matters set forth in this Complaint. The Respondent is encouraged to pay particular attention to the part of the Complaint entitled "Opportunity to Request a Hearing." If the Respondent does not respond to this Complaint within thirty (30) days of receipt, a Default Judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its Answer, the Respondent may request a hearing. It has the right to be represented by an attorney at any stage of these proceedings.

Whether or not the Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed civil penalty. The Respondent may wish to be represented by counsel during any settlement conference. EPA encourages all parties against whom it files a complaint such as this to pursue the possibility of settlement. Any such settlement shall be memorialized in a written Consent Agreement, followed by the issuance of a Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. The signature of a representative of the Respondent on a Consent Agreement shall constitute a waiver of the Respondent's right to request a hearing on any matter to which it has stipulated in the Consent Agreement.

A request for an informal conference does not extend the thirty-day period during which the Respondent must submit its written Answer and request for hearing. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing.

EPA Contact

If the Respondent has any legal questions or would like to discuss the possibility of settlement, please contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6926.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). SBREFA does not eliminate responsibility to comply with the CAA, nor does it create any new rights or defenses under law. A SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses is enclosed with this letter.

EPA urges Carrier West's prompt attention to these matters.

Sincerely,

Elisabeth Evans

for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice
3. EPA Stationary Source Civil Penalty Policy
4. SBREFA Information Sheet

cc w/ Enclosure 1:

Joshua Rickard, 8ENF-AT
Jessie Goldfarb, 8ENF-L

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2006 MAY 24 PM 3:30

IN THE MATTER OF:

Lohmiller & Company d/b/a
Carrier West, Inc.
4800 Osage Street
Denver, CO 80221,

Respondent.

DOCKET NO. CAA-08-2006-0004
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

FILED
EPA REGION VIII
HEARING CLERK

STATUTORY AUTHORITY

This civil administrative Complaint and Notice of Opportunity for Hearing (referred to as the "Complaint") is issued pursuant to Section 113(d)(1)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(1)(B), for violation of the "National Recycling and Emission Reduction Program" requirements of Section 608(c) of the CAA, 42 U.S.C. § 7671g(c), and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction). Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), authorizes the Administrator of EPA to issue this Complaint. This authority has been duly delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, United States Environmental Protection Agency-Region 8 ("EPA" or "U.S EPA-Region 8").

Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), provides that before issuing an administrative penalty order, the Administrator shall give written notice to the person to be assessed an administrative penalty and provide such person an opportunity to request a hearing. This Complaint and Notice of Opportunity for Hearing, issued pursuant to 40 C.F.R. §§ 22.13 and 22.14 of the

"Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, constitutes such written notice and opportunity to request a hearing. A copy of the Consolidated Rules of Practice is enclosed.

GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated by reference into Count I of this Complaint:

1. Respondent is Lohmiller & Company d/b/a Carrier West, Inc. ("Respondent").
2. At all times relevant to this action, Respondent, whose facility is located at 4800 Osage Street, Denver, Colorado 80221, was a corporation organized under the State of Colorado.
3. At all times relevant to this action, Respondent was a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and thus subject to regulation.
4. At all times relevant to this action, Respondent maintained, serviced, repaired and/or disposed of "appliances" as defined by 40 C.F.R. § 82.152 and/or Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g (c)(2).
5. At all times relevant to this action, Charles Nau, HVAC Mechanic, was an employee of Respondent.
6. On June 13, 2005, between 12 Noon and 1:30 pm, Mr. Nau dismantled six air conditioners on behalf of Respondent.

7. In the course of dismantling three of the air conditioners referenced in Paragraph 6, above, Mr. Nau knowingly vented or otherwise knowingly released or disposed of a class I or class II substance used as a refrigerant in such air conditioners in a manner which permitted such substance to enter the environment.

8. In addition, or in the alternative, in the course of dismantling three of the air conditioners referenced in Paragraph 6, above, Mr. Nau knowingly vented or otherwise knowingly released or disposed of a substitute substance for a class I or class II substance used as a refrigerant in such air conditioners in a manner which permitted such substance to enter the environment.

9. At all times relevant to this action, the Administrator had not determined that the venting, releasing, or disposing of such substitute substance does not pose a threat to the environment.

10. On or about November 15, 2005, Joshua Rickard, EPA Environmental Engineer, and Dean Neely, former Colorado Department of Public Health and Environment ("CDPHE") Environmental Protection Specialist, conducted an inspection of Respondent's facility with the consent of Respondent to determine compliance with the CAA and its implementing regulations.

11. During the inspection referenced in Paragraph 10, above, Mark Brown, Respondent's Commercial and Customer Assurance Business Unit Manager, admitted to Messrs. Rickard and Neely that three of six units had freon in the compressors and were vented.

12. "Freon" is a generic term describing class I and class II refrigerants listed in 40 C.F.R. Part 82, Subpart A, Appendices A and B, and substitutes for those substances.

STATUTORY AND REGULATORY FRAMEWORK

The following items apply to and are incorporated by reference into Count I of this Complaint:

13. Under Subchapter VI, Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), and its implementing regulation at 40 C.F.R. § 82.154(a)(1), no person maintaining, servicing, repairing, or disposing of an appliance may knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as refrigerant in such appliance in a manner which permits such substance to enter the environment.

14. Under Subchapter VI, Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), also applies to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. (See also 40 C.F.R. § 82.154(a)(1)).

15. Subchapter VI, Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), states that for the purposes of that paragraph, the term "appliance" includes any device which contains and uses as

a refrigerant a substitute substance and which is used for household and commercial purposes, including any air conditioner.

DESCRIPTION OF VIOLATIONS

COUNT I

16. Respondent, in the course of maintaining, servicing, repairing, or disposing of three of the appliances referenced in Paragraph 6, above, knowingly vented or otherwise knowingly released or disposed of a class I or class II substance used as refrigerant in such appliances in a manner which permitted such substance to enter the environment, in violation of Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), and 40 C.F.R. § 82.154(a)(1).

17. In addition, or in the alternative, Respondent, in the course of maintaining, servicing, repairing, or disposing of three of the appliances referenced in Paragraph 6, above, knowingly vented or otherwise knowingly released or disposed of a substitute substance for a class I or class II substance used as a refrigerant in such appliances in a manner which permitted such substance to enter the environment, in violation of Section 608(c)(2) of the CAA, 42 U.S.C. § 7671g(c)(2), and 40 C.F.R. § 82.154(a)(1).

PROPOSED CIVIL PENALTY

The proposed civil penalty has been determined in accordance with Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B). Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil penalty of up to \$32,500 per day of violation for each violation of the "National Recycling and Emission Reduction Program" requirements of Section

608(c) of the CAA, 42 U.S.C. § 7671g(c), and the "Protection of Stratospheric Ozone" regulations found at 40 C.F.R. Part 82, Subpart F (Recycling and Emissions Reduction), occurring after March 15, 2004. For purposes of determining the amount of any civil penalty to be assessed, Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), requires EPA to take into account, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

To develop the proposed penalty in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to EPA's "Clean Air Act Stationary Source Civil Penalty Policy" dated October 25, 1991 ("Penalty Policy"), including Appendix X¹. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory factors enumerated above to particular cases.

Based upon the facts alleged in this Complaint and upon the statutory factors enumerated above, as known to Complainant at this time, Complainant proposes that Respondent be assessed a penalty of **\$42,000** for the violations alleged in this Complaint. The Penalty

¹Appendix X is entitled "Clean Air Act Policy for Violation of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant," June 1, 1994.

Policy and Complainant's Statement as to Determination of Proposed Penalty are enclosed with this Complaint and incorporated herein.

The Administrative Law Judge is not bound by EPA's Penalty Policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized by statute.

Payment of the penalty may be made by cashier's or certified check, payable to the "Treasurer, United States of America" and mailed to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859, or

Federal Express, Airborne, or other commercial carrier:

U.S. EPA, 360859
Mellon Client Service Center, Room 154-0670
500 Ross Street
Pittsburgh, PA 15251-6959.

A copy of the check must be sent to the Regional Hearing Clerk and also to Jessie Goldfarb, Senior Enforcement Attorney, at the addresses provided below.

OPPORTUNITY TO REQUEST A HEARING

As provided by Section 113(d)(2)(A) of the CAA, 42 U.S.C. § 7413(d)(2)(A), Respondent has the right to request a hearing on the issues raised in this Complaint. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (8RC)
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

An Answer must be filed within thirty (30) days of receipt of the Complaint. The Answer must clearly and directly admit, deny, or explain each factual allegation of the Complaint with regard to which Respondent has any knowledge. The Answer must also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. Hearings will be conducted in accordance with the Consolidated Rules of Practice.

If Respondent fails to file an Answer with the Regional Hearing Clerk within thirty (30) days of receipt of the Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2). The proposed penalty shall become due and payable by Respondent, without further proceedings, sixty (60) days after a final order is issued upon default.

QUICK RESOLUTION

Respondent may resolve this proceeding at any time by paying the specific penalty set forth in the Complaint. Such action to make payment need not contain any response to, or admission of, the allegations set forth in the Complaint. Such action to make payment constitutes a waiver of Respondent's right to contest the allegations and appeal the final order. See Section 22.18 of the Consolidated

Rules of Practice for a full explanation of the quick resolution process.

SETTLEMENT NEGOTIATIONS

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If a settlement is reached, it will be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, U.S. EPA-Region 8. To explore the possibility of settlement in this matter, contact:

Jessie Goldfarb (8ENF-L)
Senior Enforcement Attorney
U.S. EPA-Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
(303) 312-6926.

Please note that a request for an informal settlement conference does not extend the thirty-day period for filing a written Answer and requesting a hearing.

5/24/06
Date

Elisabeth Evans
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

IN THE MATTER OF:

Lohmiller & Company d/b/a
Carrier West, Inc.

DOCKET NO. CAA-08-2006-0004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached COMPLAINT was hand-carried to the Regional Hearing Clerk, EPA-Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was sent via Certified Mail: Return Receipt Requested to:

Robert C. Montgomery
Registered Agent
1560 Broadway, #1500
Denver, CO 80202

May 24, 2006
Date

Judith McTernan
Judith McTernan

COMPLAINANT'S STATEMENT AS TO
DETERMINATION OF PROPOSED PENALTY,
IN THE MATTER OF: LOHMILLER & COMPANY D/B/A CARRIER WEST, INC.,
DOCKET NO. CAA-08-2006-0004

1. To ensure uniform and consistent enforcement response and application of the statutory penalty criteria in the Clean Air Act ("CAA"), EPA developed the "Clean Air Act Stationary Civil Penalty Policy" (the "General Penalty Policy"), dated October 25, 1991. The General Penalty Policy provides guidance for determining the amount of civil penalties EPA will seek in pre-trial settlement of civil administrative actions under Section 113(d) of the CAA. Appendix X to the General Penalty Policy, entitled "Clean Air Act Civil Penalty Policy for violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant, June 1, 1994" ("Appendix X"), takes into account certain unique aspects of stratospheric ozone enforcement cases and provides separate guidance for determining Economic Benefit and Gravity components of the penalty. Adjustment factors are to be treated in accordance with the General Penalty Policy. The General Penalty Policy and Appendix X are part of the record in this case, as they are enclosed with the Compliant.
2. For violations occurring after March 15, 2004, Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), and 40 C.F.R. Part 19 authorize the assessment of a civil administrative penalty up to thirty-two thousand five hundred dollars (\$32,500) per day for each violation of the "Stratospheric Ozone Protection" provisions of the CAA. Based on the allegations in the Complaint filed in this matter, and taking into account the penalty assessment criteria of Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1)¹, Complainant proposes to assess Respondent a civil penalty of **\$42,000**.
3. In the Complaint in this matter, EPA-Region 8 alleged that:
(1) Respondent violated Section 608(c)(1) of the CAA, 42 U.S.C. § 7671g(c)(1), and 40 C.F.R. § 82.154(a)(1) when, in the course of maintaining, servicing, repairing, or disposing of three air conditioning units, it knowingly vented or otherwise knowingly released or disposed of a class I or class II substance used as a refrigerant in such appliances in a manner which permitted such substance to enter the environment; and (2) in addition, or in the alternative, Respondent violated Section 608(c)(2) of the

¹These criteria are, in addition to such other factors as justice may require: (1) the size of the business; (2) the economic impact of the penalty on the business; (3) the violator's full compliance history and good faith efforts to comply; (4) the duration of the violation as established by any credible evidence (including evidence other than the applicable test method); (5) payment by the violator of penalties previously assessed for the same violation; (6) the economic benefit of noncompliance; and (7) the seriousness of the violation.

CAA, 42 U.S.C. § 7671g(c)(2), and 40 C.F.R. § 82.154(a)(1) when, in the course of maintaining, servicing, repairing, or disposing of the three air conditioning units, it knowingly vented or otherwise knowingly released or disposed of a substitute substance for a class I or class II substance used as a refrigerant in such appliances in a manner which permitted such substance to enter the environment.

4. The penalty proposed in the Complaint was calculated as follows:

Interpreting the Penalty Policy in the light most favorable to the violator, EPA determined that the violator did not gain a significant Economic Benefit as a result of its noncompliance with the CAA.

The Gravity component for the first of the three vented air conditioning units was calculated using the matrices on pages 11 and 13 of Appendix X. (The page references that follow are to pages of Appendix X.) For Matrix 1, EPA selected the \$15,000 cell, which is the intersection of the Major Potential for Harm axis and the Major Extent of Deviation from Requirement axis (see page 11). Potential for Harm is comprised of two factors: Risk of or Actual Loss and Importance of Compliance to Statutory or Regulatory Scheme. Interpreting the Penalty Policy in the light most favorable to the violator, EPA determined that the Risk of or Actual Loss was Minor: although the venting was very likely to result in a release, there were approximately five pounds of refrigerant in the unit (see pages 6-7). The Importance of Compliance to Statutory or Regulatory Scheme was Major because the violator was knowingly venting (see page 8). Because the two factors constituting Potential for Harm result in two different designations (i.e., Minor and Major), the more serious designation (i.e., Major) is used (see page 9). The Extent of Deviation from Requirement was Major because the violator deviated from the statutory and regulatory requirements to such an extent that most (or important aspects) of the requirements were not met, resulting in substantial noncompliance.

Appendix X states that EPA will assess additional amounts against a company for each repeated violation of the same requirement to ensure that the total penalty assessed appropriately reflects the seriousness of the violations (see pages 11-12.) For the violations associated with each of the two remaining vented air conditioning units, EPA selected the \$3,000 cell of Matrix 2, which is the intersection of the Major Potential for Harm axis and the Major Extent of Deviation from Requirement axis, for a total of \$6,000.

Appendix X states that EPA will scale the penalty to the Size of Violator, which is determined from a company's net worth (see page 12). It also states that if EPA is unable to obtain

information about net worth or gross revenues of the company's entire operation (not just the violating facility), EPA should use an aggressive assumption for the size of the violator and adjust it downward if proof of a lower number is presented during negotiations (see page 13). Therefore, at this time, the total Gravity Component is multiplied by 2 for Size of Violator. The total Gravity is \$15,000 for the initial violation, plus another \$6,000 for the two remaining vented air conditioning units, for a total Gravity of \$21,000. That \$21,000 is multiplied by 2 for Size of Violator, totalling **\$42,000**.

shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.
22.1 Scope of this part.

22.2 Use of number and gender.

22.3 Definitions.

22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.

22.5 Filing, service, and form of all filed documents; business confidentiality claims.

22.6 Filing and service of rulings, orders and decisions.

22.7 Computation and extension of time.

22.8 Ex parte discussion of proceeding.

22.9 Examination of documents filed.

Subpart B—Parties and Appearances

22.10 Appearances.

22.11 Intervention and non-party briefs.

22.12 Consolidation and severance.

Subpart C—Preliminary Procedures

22.13 Commencement of a proceeding.

22.14 Complaint.

22.15 Answer to the complaint.

22.16 Motions.

22.17 Default.

22.18 Quick resolution; settlement; alternative dispute resolution.

22.19 Prehearing information exchange; prehearing conference; other discovery.

22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.

22.22 Evidence.

22.23 Objections and offers of proof.

22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

22.25 Filing the transcript.

22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.

22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.

22.30 Appeal from or review of initial decision.

Subpart G—Final Order

22.31 Final order.

22.32 Motion to reconsider a final order.

Subpart H—Supplemental Rules

22.33 [Reserved]

22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

22.36 [Reserved]

22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.

22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.

22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

22.40 [Reserved]

22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.

22.43 Supplemental rules governing the administrative assessment of civil penalties against a Federal agency under the Safe Drinking Water Act.

22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 142(c) of the Safe Drinking Water Act.

22.46-22.49 [Reserved]

Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

22.50 Scope of this subpart.

22.51 Presiding Officer.

22.52 Information exchange and discovery.

22.53 Information exchange and discovery.

22.54 Information exchange and discovery.

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SOURCE: 64 FR 40176, July 23, 1999, unless otherwise noted.

Subpart A—General

§22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 106(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1416(a) and (f));

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6926(e), 6991e, and 6992(d)), except as provided in part 24 of this chapter;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

(7) The assessment of any administrative civil penalty under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609)

(8) The assessment of any administrative civil penalty under section 32 of the Emergency Planning and Community Right-To-Know Act of 1980 (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under section

First page only

CLEAN AIR ACT
STATIONARY SOURCE
CIVIL PENALTY POLICY

October 25, 1991

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APPENDIX X

CLEAN AIR ACT CIVIL PENALTY POLICY FOR VIOLATIONS OF 40 C.F.R. PART 82, SUBPART F: MAINTENANCE, SERVICE, REPAIR, AND DISPOSAL OF APPLIANCES CONTAINING REFRIGERANT June 1, 1994

INTRODUCTION

Purpose

This appendix provides guidance for calculating the civil penalties EPA will require in pre-trial settlement of judicial enforcement actions, as well as the pleading and settlement of administrative enforcement actions.

Scope

This appendix is to be used pursuant to Sections 113(b) and (d) for violations of Section 608 of the Clean Air Act ("Act" or "CAA"), as amended, and 40 C.F.R. Part 82, Subpart F.

Usage

This appendix should be used in conjunction with the Stationary Source Civil Penalty Policy to determine a preliminary deterrence amount, which is the sum of the economic benefit accruing from noncompliance and the gravity component reflecting the seriousness of the violation.

This appendix is to be used for settlement purposes in civil judicial cases involving violations of Section 608, but EPA retains the discretion to seek the full statutory maximum penalty in all civil judicial cases that do not settle. In addition, for administrative penalty cases, the appendix is to be used in conjunction with the Stationary Source Civil Penalty Policy to determine an appropriate penalty to be pled in the administrative complaint, as well as serving as guidance for settlement amounts in such cases. As the Stationary Source Civil Penalty Policy indicates, for administrative penalty cases under Section 113(d)(1), the Region should plead the penalty calculated under this policy, using the most aggressive assumptions supportable, in its complaint.

Persons Liable

Any "person" as defined in the Act and in the Section 608 regulations may be held liable for violations of Section 608. For example, all "persons" owning and/or operating a facility



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

